Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ROGER ALEXANDER HOUSE, PETITIONER

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FOR THE ARMED FORCES

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I Whether M.R.E. 707 is Unconstitutional When an Accused Seeks to Admit Polygraph Evidence Under the *Daubert* Standard.

II Whether the Accused Was Denied His Constitutional Right to Prepare and Present a Defense as Well as His Statutory Rights to Equal Access to Witnesses Pursuant to Art. 46 and 49 of the Uniform Code of Military Justice.

III Whether Military Judge's Denial of Evidence Under M.R.E. 412 Acted to Deprive the Accused of His Constitutional Rights Under the Fifth and Sixth Amendments to the Constitution.

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SCIENTIFIC, PROFESSIONAL AND LEGAL ISSUES SURROUNDING APPLICATION AND ACCEPTANCE OF POLYGRAPH EVIDENCE, 1986 UTAH L. REV. 29, 72 (1986) 10

OPINIONS BELOW

The Opinion of the Court of Appeals for the Armed Forces is unreported. The decision of the Navy and Marine Corps Court of Criminal Appeals denying relief is also unreported. The decision of the Judge Advocate General of the Navy is unreported.

BASIS FOR JURISDICTION

These issues are properly before the Supreme Court of the United States pursuant to 28 U.S.C. § 1254 and Rule 10 of the Supreme Court rules which govern the review on Certiorari. The final judgment of the United States Court of Appeals for the Armed Forces was entered on December 12, 2005. The submission for filing is within the 90 day requirement of Rule 13.1 of the Supreme Court Rules. This proceeding does not question the constitutionality of any Act of Congress or any State Legislature. Consequently, the provisions of Rule 29.4(b) and (c) do not apply.

RELEVANT PROVISIONS INVOLVED

The following constitutional provisions treaties, statutes, ordinances and regulations are applicable to this proceeding:

U. S. Constitution, Amendment V.
U. S. Constitution, Amendment VI.
10 U.S.C. § 832. Art. 32 U.C.M.J.
10 U.S.C. § 836. Art. 36 U.C.M.J.
10 U.S.C. § 837. Art. 37 U.C.M.J.
10 U.S.C. § 846. Art. 46 U.C.M.J.
10 U.S.C. § 849. Art. 49 U.C.M.J.

10 U.S.C. § 869. Art. 69 U.C.M.J.
M.R.E. 412, Manual for Courts-Martial.
M.R.E. 707, Manual for Courts-Martial.
R.C.M. 701, Manual for Courts-Martial.
R.C.M. 702, Manual for Courts-Martial.
R.C.M. 703, Manual for Courts-Martial.

Pertinent text of citations are set out in the appendix.

STATEMENT

The right to present a defense is a critical element of our system of justice. Although embodied in the military justice system, it was sadly lacking in the trial of Lieutenant (LT) Roger Alexander House. Caught in the middle of a web of deceit, not of his making, he saw his skyrocketing career destroyed by a trial that violated the Constitution of the United States, the Uniform Code of Military Justice and the Manual for Courts-Marital.

LT House was a "Mustang" who rose through the ranks to become one of the Navy's top young officers. An African-American sailor with a stellar record, LT House had been selected for the Navy's commissioning program. Petitioner was a Lieutenant Commander Select at the time of the trial. He had previously been chosen to serve to be the Executive Assistant to the Commander Navy Medical Command and was pre-selected to be the aide to the Surgeon General of the Navy. While in transit, he found himself charged with rape, fraternization and other charges resulting from an alleged dalliance with an enlisted female during the night of his going away party. The female claimed that she had voluntarily undressed for the purpose of having sex with an another officer, LT Harris, at his home, when the accused and a third officer,

LT Williams, were alleged to have walked in unclothed. According to the complaining witness, in the space of just a few minutes the three officers allegedly had oral and vaginal intercourse with her, against her will, and then departed. She was later observed snuggling Harris at a local restaurant by sailors who knew both of them. It was also confirmed that she had previously engaged in a short lived affair with LT Williams. Petitioner was apparently nothing more than collateral damage since he had never met the complaining witness before the night in question.

Petitioner executed a statement saying that he and Williams had gone to Harris' home to visit their friend but immediately withdrew when they realized he was preoccupied with a female. Petitioner then went home to his wife.

At defense counsel's request, Mr. William J. Allen administered a polygraph test to LT House on 24 May 2001. Mr. Allen found that petitioner was not deceptive and was truthful in his statements that he did not engage in oral or anal sex, rape or otherwise use force of any means against the complaining witness. A group Article 32 was convened on 25-26 May 2001. The Investigating Officer noted that the complaining witness' testimony was incredible and that she was successfully impeached by the defense. He recommended that no charges be brought against Lieutenants House and Williams. He recommended fraternization charges be brought against Lieutenant Harris. The General Court-Martial convening authority ignored the recommendations of the Investigating Officer and charged all three officers with rape and a host of mulitiplicious other charges. Retired Navy Criminal Investigative Service Special Agent Kenneth Lord was hired to conduct a preliminary investigation. Almost immediately Lord was stonewalled. The case control agent, Gail Beasley refused

to meet with Lord.[1] At the arraignment, the defense moved for relief noting that additional investigation had been conducted by Beasley since the Article 32.[2] The Military Judge ordered Beasley to a deposition on 28 August 2001.

During his visit, Mr. Lord arranged to interview witnesses at the Navy Legal Service Office Memphis, a tenant activity onboard NSA Mid-South. While there, he was visited by the Staff Judge Advocate of the Naval Support Activity and Investigator Colley from the base. Colley and the SJA tried to intimidate Lord and told him to confine his activities to the NLSO. The defense then filed a motion for appropriate relief and requested a hearing on 27 August to coincide with the deposition. The Military Judge refused to hear the motion on that date based on an offer from the Trial Counsel to provide assistance.[3]

On 18 August 2001, the accused's defense counsel received a threatening letter by certified mail from the Commanding Officer, NSA-Mid South. The letter forbade him from conducting any inquiries at the barracks or other areas on the base. He was also told that all interviews must be pre-arranged, which precluded open and impromptu discussions with potential witnesses

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[1] In his final assignment as an NCIS agent, Mr. Lord was assigned to the Memphis office and worked with Gail Beasley, They enjoyed a cordial professional relationship.

[2] Specifically at issue was some highly suspect DNA evidence that appeared to tie the accused to the complaining witness.

[3] No assistance was received from Trial Counsel. Trial Counsel failed to produce Colley for a defense interview and actively tried to prevent the defense from obtaining a list of names of barracks residents.

throughout the base. This letter threatened the denial of base access privileges and criminal sanctions if counsel did not heed the admonishment.

Interviews with witnesses indicated that most people living at the barracks knew the complaining witness and could provide damaging information concerning her which could lead to exculpatory information in this case. The complaining witness had a history of telling graphic sexual fantasies with herself as the star. These stories were shared with co-workers and friends. Additionally, there was evidence that the complaining witness was actively seeking sexual activity and that she preferred to have sex with persons E-6 and above. NCIS Agent Beasley, at a deposition, admitted that she had full access to the barracks although such access was denied to the defense.

The complaining witness stated that she was involved in a sexual encounter with the three accused but also claimed that it was her only sexual experience of that night. An analysis of her panties by the Army Crime Lab revealed traces of semen from a person other than the three accused.

The defense requested and was denied funding to hire an investigator as well as to send a counsel to Houston Texas to pursue a report of a false sexual assault complaint by the complaining witness against her father.

Petitioner, along with Lieutenants Harris and Williams, was tried 23-31 January 2002. The petitioner was acquitted of most of the charges including a charge of forcible rape.[4] LT House was convicted, contrary to his pleas, of false swearing, conspiracy to make a false official

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[4] The adultery charge was dismissed and LT House was acquitted of fraternization and indecent acts.